

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Allocations and Service Rules for the)
Advanced Wireless Services in the 1.7 GHz)
and 2.1 GHz Bands)

WT Docket No. 02-353

PETITION FOR RECONSIDERATION

T-Mobile USA, Inc. (“T-Mobile”), pursuant to Sections 1.106 and 1.429 of the Commission’s rules, 47 C.F.R. §§ 1.106 and 1.429, requests that the Federal Communications Commission (“Commission”) reconsider its *Report and Order* in this proceeding, and reconfigure the 30 MHz E block license into two separate 10 MHz and 20 MHz licenses.¹

I. INTRODUCTION

In the *Report and Order*, the Commission adopted rules for Advanced Wireless Services (“AWS”) in the 1710-1755 and 2110-2155 MHz bands, including rules carving out spectrum block sizes. Specifically, the Commission established license bands using paired spectrum blocks of five, 10 and 15 MHz. T-Mobile supports the Commission’s designation of the two 10 MHz A and B block licenses (paired blocks of five MHz) and the two 20 MHz C and D block licenses (paired blocks of 10 MHz) in order to promote competition, innovation, and economic opportunity in the provision of wireless services. However, we urge the Commission to reconsider the designation of the 30 MHz E block licenses to further the Commission’s goals of

¹ See *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Report and Order, 18 FCC Rcd 25162 (2003) (“*Report and Order*”).

promoting flexible and efficient spectrum use. T-Mobile recommends that the Commission reconfigure the 30 MHz license into a 20 MHz license composed of the 1740-1750 and 2140-2150 MHz spectrum block and a 10 MHz license composed of the 1750-1755 and 2150-2155 MHz spectrum block.²

As T-Mobile demonstrates below, dividing the 30 MHz licenses into smaller “building blocks” will better promote the robust and efficient use of the AWS spectrum and ensure continued, vigorous competition in the wireless industry.

II. EACH 30 MHZ BLOCK LICENSE SHOULD BE SPLIT INTO A 10 MHZ AND A 20-MHZ LICENSE

The Commission should split the 30 MHz E block licenses into two separate, symmetrically paired licenses: one of 10 MHz and one of 20 MHz. Both would continue to be licensed on a regional economic area groupings basis. The 10 MHz license would be composed of the 1750-1755 and 2150-2155 MHz spectrum blocks, and the 20 MHz license would be composed of the 1740-1750 and 2140-2150 MHz spectrum blocks.

This approach would promote more efficient use of the spectrum for several reasons. By splitting the 30-MHz block, the Commission would ensure that licensees would not be forced to acquire more spectrum than they need for their business operations. AT&T Wireless Services Inc. has noted that spectrum blocks exceeding a carrier’s needs would no doubt result in unnecessary transaction costs and potential delay in the availability of spectrum to those who

² As an existing CMRS operator and member of the Cellular Telecommunications & Internet Association, T-Mobile is an “interested person” within the meaning of Sections 1.429(a) and 1.106(b)(1) of the Commission’s rules. Since the Commission closed its comment cycle in this proceeding in March 2003, the wireless industry has experienced significant growth in consumer demand for wireless Internet access and other spectrum-intensive broadband services, as well as rapidly increasing demands for voice capacity, driven in part by the growing displacement of traffic onto wireless networks. These changes underscore the importance of providing national and regional carriers with access to appropriately-sized blocks of additional spectrum so that they may augment their existing voice and data services and deploy innovative product offerings. Cost-efficient access to such spectrum is crucial to carriers’ continued viability and growth so that they can remain competitive in the wireless marketplace and, more broadly, continue to compete with wireline service providers. *See* 47 C.F.R. §§ 1.429(b)(1), (3). All comments filed in this proceeding will hereinafter be short cited.

value it most.³ At the same time, any bidders wanting blocks larger than 20 MHz would be able to aggregate two or more smaller blocks at auction or in the secondary market. Accordingly, the revised band plan advocated by T-Mobile would promote the Commission's spectrum management goals, including flexible and efficient spectrum use.⁴

III. A 30 MHZ SPECTRUM BLOCK DOES NOT SERVE KEY USERS IN A COMPETITIVE MARKET

Like most carriers, T-Mobile's spectrum needs vary across markets. Although in one sense more spectrum is almost always better than less, given the likely acquisition costs of spectrum suitable for CMRS services, the optimal amount of spectrum that carriers like T-Mobile may need to acquire in a given market will vary – *e.g.*, 10, 20, 30 MHz (or in some cases, possibly more). Although the FCC has anticipated these different spectrum needs by providing spectrum blocks of three different sizes, T-Mobile believes a better approach – one more consonant with the Commission's spectrum and auction policy goals – would be to create an additional license by splitting the large 30 MHz license in the current band plan into a 20 MHz and a 10 MHz license.

The Commission has acknowledged that license blocks ideally should match the business plans of initial licensees.⁵ Although the Commission intends for the 1.7 GHz and 2.1 GHz bands to be used to deploy a range of advanced services by current carriers and new market entrants alike, the Commission has acknowledged that AWS spectrum will be used *primarily* to support the growth and development of advanced services provided by existing PCS and cellular

³ AT&T Wireless Comments at 6 (noting that offering large spectrum blocks in certain geographic areas would force bidders to engage in "excessive upfront investment" and entail significant transaction costs as licensees seek to dispose of unneeded portions in the secondary market, which also could result in some spectrum lying fallow for an extended time).

⁴ See 47 U.S.C. § 309(j)(3)(D).

⁵ See *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Notice of Proposed Rulemaking, 17 FCC Rcd 24135, 24143 (2002) ("NPRM").

carriers.⁶ Chairman Michael Powell has stated that the AWS spectrum allocated in the *Report and Order* is a “key building block for the broadband Internet future of licensed wireless service.”⁷ The Chairman further stated that the 90 MHz allocation for AWS will generate “momentum” for *existing wireless providers* to build infrastructure to support broadband Internet applications.⁸

To this end, the Commission has acknowledged the need for carriers to “tailor their acquisition of spectrum in these bands to meet their individual business plans.”⁹ The Commission intended to offer bandwidth in amounts that would provide various efficient uses of the spectrum without requiring carriers to adjust their licenses after the fact through multiple secondary market transactions such as partitioning and disaggregation.¹⁰ While these tools are valuable in adjusting spectrum holdings after an auction, they tend to be more costly and time consuming than aggregation of licenses during an auction. With that goal in mind, the Commission selected bandwidth dimensions with the intention of facilitating aggregation during auction in keeping with its “building block” approach to acquiring only the spectrum necessary to meet individual business plans.¹¹ The Commission’s current band plan, however, is not optimally suited to the needs of those existing PCS and cellular carriers, such as T-Mobile, seeking smaller spectrum licenses in many cases to adapt to changing market forces.

By comparison, the cost of aggregating smaller spectrum blocks in any given market would be marginal, and the burden would be much less onerous than divestiture of unwanted

⁶ AT&T Wireless Comments at 3 (*citing Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, Second Report and Order, 17 FCC Rcd 23193, 23200-01 (2002)).

⁷ *Report and Order*, 18 FCC Rcd at 25241.

⁸ *Id.*

⁹ *Id.* at 25178.

¹⁰ *Id.*

¹¹ *Id.* at 22524.

spectrum. Indeed, the Commission has noted that aggregation at auction of smaller spectrum blocks and licenses may provide bidders with greater flexibility to implement their business plans as compared with a more traditional approach of defining an optimal size.¹² At the very least, licensing spectrum in a 10-20 MHz split could save time and resources, and also could expedite the development and deployment of advanced services.¹³

IV. PRIOR AUCTIONS SUPPORT SMALLER SPECTRUM BLOCKS

On a number of occasions in the recent past, the Commission has opted to break large spectrum blocks into smaller portions when auctioning spectrum suitable for CMRS services. For example, the Commission ultimately decided to reconfigure the license size of the C block spectrum in Auction No. 35. The Commission concluded that each 30 MHz C block license available in Auction No. 35 should be reconfigured into three separate 10 MHz C block licenses. Bidders seeking more than 10 MHz of spectrum would be able to aggregate two or more of the 10 MHz C block licenses in any market.¹⁴

In support of this reconfiguration, the Commission noted that dividing the 30 MHz spectrum into smaller block licenses would provide bidders with more flexibility to adapt their bidding strategies to meet their business plans, and ultimately make licenses more affordable.¹⁵ The Commission further concluded that dividing the block into 10 MHz-size licenses was “viable,” because 10 MHz has “always been one of the principal license sizes used in broadband PCS.”¹⁶ The Commission also has concluded that 10 MHz broadband PCS block licenses generally provide opportunities to certain applicants, such as new entrants and smaller

¹² *NPRM*, 17 FCC Rcd at 24143-44.

¹³ *Id.* at 24147.

¹⁴ *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services Licenses*, Sixth Report and Order on Reconsideration, 15 FCC Rcd 16266 (2000) (“*Sixth Report and Order*”).

¹⁵ *Id.* at 16274-75.

¹⁶ *Id.* at 16274.

companies that might not otherwise be able to acquire a 30 MHz license, in furtherance of the statutory objectives contained in Section 309(j) of the Communications Act.¹⁷

The Commission likewise opted for smaller block licenses in the *700 MHz First Report and Order*, where it established 20 MHz and 10 MHz blocks for wireless use.¹⁸ In that proceeding, the Commission stated that 10 MHz block wireless licenses “should prove of interest to parties in the record who desire spectrum to deploy innovative wireless technologies, including high-speed Internet access, that do not require as much spectrum.”¹⁹

V. CONCLUSION

By dividing each available 30 MHz E block license into a 20 MHz and a 10 MHz license, the Commission will allow potential bidders, the majority of whom are expected to be existing PCS and cellular carriers, to acquire only the spectrum necessary to meet their business objectives. Companies that seek more spectrum for services still may aggregate the 10 MHz and 20 MHz E block licenses.

¹⁷ See 47 U.S.C. § 309(j)(3)(B). See also *Report and Order*, 18 FCC Rcd at 25178.

¹⁸ *Sixth Report and Order*, 15 FCC Rcd at 16274 (citing *Service Rules for 746-764 MHz and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules*, First Report and Order, 15 FCC Rcd 476 (2000) (“*700 MHz First Report and Order*”)).

¹⁹ *700 MHz First Report and Order*, 15 FCC Rcd at 478.

Therefore, T-Mobile respectfully requests that the Commission reconsider its conclusion to adopt a 30 MHz block of licenses in its *Report and Order* and reconfigure the block into 10 MHz and 20 MHz licenses as discussed herein.

Respectfully submitted,

T-Mobile USA, Inc.

Thomas J. Sugrue, Vice President –
Government Affairs
Robert A. Calaff, Director –
Federal Policy
T-Mobile USA, Inc.
401 Ninth Street, N.W.
Suite 550
Washington, D.C. 20004
(202) 654-5900

By: /s/ Cheryl A. Tritt
Cheryl A. Tritt
Doane F. Kiechel
Jennifer A. Cetta
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 887-1500

Counsel for T-Mobile USA, Inc.

March 8, 2004